180-1
Under the provisions of the Interstate Compact on the Placement of Children, Article 5(a), the sending agency shall retain jurisdiction over the child, and shall continue to have financial responsibility for the support and maintenance of the child during the period of the placement. (Family Code §7901)

180-2
Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article 5 thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of other state laws also may be invoked. (Family Code §7902)

180-3
When a child in FC reaches age 18, the child shall receive continued benefits until age 19, provided all the following conditions are met. (a) The FC child was attending high school or a vocational-technical training program on a full-time basis prior to reaching age 18. (b) The child continues to meet FC eligibility requirements of this section; reside in FC; and attend on a full-time basis either a high school or if he/she has not completed high school, a vocational technical training program which cannot result in a college degree as specified in §42-101.2 provided he/she is reasonably expected to complete either program before reaching age 19. (c) The child and the placement agency have signed a mutual agreement which documents the continued need for FC placement. (§45-201.111, revised effective November 26, 1997)

Full-time attendance must be defined and verified by the school. (§45-201.111(b)(3), effective November 26, 1997)

180-4
In order to be eligible for AFDC-FC benefits, a child must meet the age requirements of §42-100 et seq.; the property requirements in §42-200 et seq.; the residence requirements in §42-400 et seq.; the citizenship and alienage requirements in §42-430 et seq.; the social security enumeration requirements in §40-105.2; the income requirements in §44-100 et seq.; the child support requirements in §§43-200, 43-201.2, and 43-203; and the application requirements in §40-100 et seq. (§§45-201.1-.5)

180-4A
Federal law has provided, since December 14, 1999, that each child can have up to $10,000 in property. While state regulations (§45-201.12) have not been amended as of November 1, 2002, the CDSS has issued instructions to counties as follows: "Accordingly, for State and federal AFDC-FC, any child may now retain up to $10,000 in property. For purposes of determining whether the child would have been eligible for AFDC in the petition month as required by ... §45-202.33, the family may also have up to $10,000 in property and still qualify for AFDC. The $10,000 is in addition to the $1,500 vehicle limit. This increased property limit is effective December 14, 1999." (All-County Letter No. 02-45, June 25, 2002 implementing 42 United States Code 672(a))

180-4B
On December 14, 1999, federal law, as contained in the United States Code (USC), was amended as follows:

> "In determining whether a child would have received aid under a State plan approved under section 602 of this title (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 602(a)(7)(B) of this title, as so in effect) have a combined value of not more than $10,000 shall be considered to be a child whose resources have a combined value of not more than $1,000 (or such lower amount as the State may determine for purposes of such section 602(a)(7)(B) of this title)."

(42 USC §672(a))

180-4C REVISED 5/05
State law was amended effective January 1, 2002 to provide that in addition to the personal property permitted by other provisions, an FC child may retain resources with a combined value of not more than $10,000, consistent with 42 United States Codes §672(a). Up to $10,000 in cash savings is exempt for purposes of determining eligibility and grant amount. (§45-201.12,)

180-5
When a caretaker relative receives AFDC-FC for the FC children, that relative may be eligible to receive AFDC-FG for himself/herself.

If that caretaker relative chooses to receive AFDC-FG, and then loses AFDC-FG eligibility, there is potential eligibility for Transitional Child Care and Transitional Medical Care. (All-County Letter No. 94-91, October 31, 1994, effective March 1, 1994)

180-6
State regulations in §82-506 provides as follows:

> "As a condition of eligibility for assistance, each CalWORKs or foster care applicant/recipient shall assign to the county all rights to child/spousal support for the applicant/recipient or any other family member required to be in the AU under Section 82-820.3." (§82-506.1, effective October 1, 1998)

180-6A
State regulations in Handbook §12-410 provide:

> "As a condition of eligibility for and under the CalWORKs or Foster Care aid programs, each applicant or recipient shall assign to the district attorney any rights to support from any other person the applicant or recipient may have on his or her own behalf or on behalf of any other family member for whom the applicant or recipient is applying for or receiving aid. Receipt of aid automatically constitutes an assignment by operation of law." (Handbook §12-410.1, effective October 1, 1998)

Despite the differences between §82-506.1 and Handbook §12-410.1, the Handbook refers to §82-506 for assignment of support rights' requirements. (Handbook §12-410.11, effective October 1, 1998)

181-1
In order to qualify for the federal AFDC-FC Program, a special requirement is that the child shall be removed from the home of a parent or relative as a result of a court order. This regulation was modified effective January 1, 1993 to allow aid to children removed by voluntary placement in certain situations. (§45-202.4)

181-1A
A child is potentially eligible for federal AFDC-FC benefits when the child is removed from the home of a parent or guardian as a result of a voluntary placement agreement. Both of the following conditions must exist: (1) There is a mutual decision between the child's parent or guardian and the placing agency; and (2) There is a written binding agreement between the County Welfare Department, a licensed adoption agency or CDSS acting as an adoption agency, and the parent or guardian. (§45-202.412)

A child voluntarily placed shall be eligible for AFDC-FC payments for a period up to 180 days beginning with the date one of the above-mentioned agencies assumes responsibility under a voluntary placement agreement, provided all other eligibility requirements are met. (Subsection .412(c))

181-2A REVISED 5/05
For federal AFDC-FC purposes, the child shall have been linked to the AFDC-FG/U program during the month in which the petition was filed with the juvenile court which led to the child's placement into FC pursuant to a detention or disposition order, or the month in which the voluntary placement agreement was signed.

Linkage is met if the child was living in the home of the parent or relative from whom removed, and (1) was eligible for and received AFDC, or (2) would have been eligible for AFDC if application had been made. Linkage is also met if the child was no longer living in the home of the relative from whom removed, but would have been eligible for AFDC based on that relative's home had the child been living there and had application been made. To meet this condition, the child shall have been living with the relative from whom removed within any of the six months prior to the month in which the petition was filed with the juvenile court which led to the child's FC placement pursuant to a detention or disposition order. (§45-202.331)

181-2B
The California Court of Appeal held that §§45-202.311-.313 were inconsistent with federal law. Specifically, the court said there could not be a requirement that in order to receive federal AFDC-FC, the foster child must have lived with a parent or relative from whose home the child had been removed, within any of the six months prior to the filing of a petition with the Juvenile Court. (*Land* v. *Anderson* (1997) 55 Cal. App. 4th 69, 63 Cal. Rptr. 2d 717, rev. denied July 16, 1997)

Following the Land decision, California enacted W&IC §11402.1. That law stated, in pertinent part, that "unless federal financial participation (FFP) is obtained, no payment of AFDC-FC may be made from either state or county funds on behalf of a child determined to be eligible for AFDC-FC solely as a result of the decision of the California Court of Appeal in *Land* v. *Anderson*."

On appeal, following a finding of contempt of court against CDSS Director Anderson, the Court of Appeals set aside the contempt order, and concluded that the Director could not comply with the original Land decision, because [as remains true as of November 1, 2002] the federal government had declined to authorize FFP. (Anderson v. Superior Court (1998) 68 Cal. App. 4th 1240)

181-3
In order for a child to be eligible for federal AFDC-FC, the court order which places the child shall result in the child's placement in foster care with a nonrelative or with a different relative than the one from whose home he or she was removed. This requirement shall be determined to be met if the child was absent from the parent's or relative's home in the month the petition which initiated the court action for removal was filed, provided the child had resided with such parent or relative within any of the six months prior to the month that the petition was filed. (§45-202.411(b))

181-3A
Under federal regulations in order to qualify for federal AFDC-FC, a child's removal from the home, per Social Security Act §472(a)(1), "… must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care." (45 Code of Federal Regulations (CFR) §1356.21(c))

In certain situations, there are limitations to federal eligibility when a child has been removed from the home of a specified relative:

"(1) For the purposes of meeting the requirements of section 472(a)(1) of the [Social Security] Act, a removal from the home must occur pursuant to:

"(i) A voluntary placement agreement entered into by a parent or relative which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or

"(ii) A judicial order for a physical or constructive removal of the child from a parent or specified relative.

"(2) A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the State agency.

"(3) A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties."

(45 CFR §1356.21(k))

181-3B ADDED 6/04

On July 25, 2003, the Department of Health and Human Services approved the CDSS amendment to California's Title IV-E State Plan. This amendment adds §45-202.332 to the State Plan. The approval was based on *Rosales* v. *Thompson*, 321 F. 3d 835, and effects eligibility for federal AFDC-FC for children living with relatives in the month the petition or within any of the six months prior to the petition month. This approval is effective April 1, 2003, and applies to cases in which the petition was filed on or after that date.

MPP §45-202.332 states that the linkage requirement (to federal AFDC-FG or U) if "the county has information that the child resided with any relative … during the petition month or within any of the six months prior to the month in which the petition was filed or the voluntary placement was signed, and can establish that the chills would have been eligible based on that home, had application been made while the child was living there."

Where a child cannot be linked to AFDC based on the legal home of removal, the child may be linked for federal foster care purposes to the qualified relatives home if the child would have been eligible in that home.

For case in which the petition was filed on or after April 1, 2003, if the child is not receiving foster care, is receiving state foster care or is an emergency assistance (EA) case, the county must complete a second eligibility determination. Most children will be eligible for benefits with a needy or non-needy caretaker relative unless the child has significant income and/or resources or some other factor would make the child ineligible.

One of the eligibility criteria for federal foster care is approval of the relative's home in accord with All-County Letter 02-78, October 24, 2002).

The Court of Appeals Ninth Circuit has remanded the *Rosales* case back to the U.S. District Court for the Eastern District of California. These proceedings could result in changes to these instructions.

(All-County Letter 03-43, December 31, 2003)

181-3C ADDED 6/04

On March 3, 2003, the United States Court of Appeals for the 9th circuit issued an opinion in *Rosales v. Thompson. Rosales* held that a child may establish eligibility for AFDC Foster Care either in the home of the relative from whom removed or in the home of a relative other than the relative from whom removed.

The case involves the Department of Health and Human Services (DHHS) interpretation of 42 United States Code (USC) §672.

The Secretary of DHHS maintained that under 42 USC 672, only AFDC eligibility in the home of removal is pertinent to determine if the child is eligible for federal Foster Care.

The court in *Rosales* held that 42 USC 672(a) cannot reasonably be interpreted to preclude AFDC Foster Care payments to children who are AFDC eligible in <u>any</u> relative's home at the time the petition removing them from an abusive or neglectful home is filed.

In reviewing the legislative history, the court concluded: "that eligibility for AFDC benefits on the date of the filing of a removal petition is all that matters. Whether the child is living in and AFDC eligible in the home from which he is removed or in the home of some other relative later designated as his foster parent does not make a difference".

(*Rosales* v. *Thompson*, (2003) 321 F3d 835)

181-3D ADDED 10/04
The U.S. District Court, pursuant to *Rosales* v *Thompson,* issued an amended order on August 17, 2004 clarifying that "foster children are eligible for AFDC-foster care payments if they were AFDC-eligible prior to their placement in foster care." Thus, AFDC linkage may be based on a relative's home in which the child was living at the time the petition was filed or within six months prior to the month of petition. This does not include relatives with whom the child was placed after the petition was filed.

(All County Letter 04-12, September 21, 2004)

181-3E ADDED 10/04
The U.S. District Court, pursuant to *Rosales* v *Thompson,* issued amended orders on February 20, 2004 and August 17, 2004 that require broader eligibility criteria stated in § 45-202.332 be applied in foster care cases that were open on or after March 3, 2003. The court ordered that foster care cases open on March 3, 2003 shall have broader eligibility criteria retroactively back to December 23, 1997. Cases closed, i.e. cases in which dependency has been dismissed and for which the agency no longer has responsibility for placement and care, on or before March 2, 2003 are not affected.

If the child in an open case is not receiving foster care, is receiving CalWORKs or Adoption Assistance payments, or is receiving state foster care or is an Emergency Assistance case, the county must redetermine eligibility under the new criteria. All non-federal foster care cases must be reviewed within eight months of August 17, 2004. All reviews and payment adjustments that meet *Rosales* and federal foster care requirements must be completed by April 17, 2005. (All County Letter 04-12, September 21, 2004)

181-3F ADDED 10/04
As part of the review for foster care retroactive to December 23, 1997 pursuant to *Rosales* v. *Thompson*, the county must ensure that the appropriate licensing/approval standards are met. That is, the child must be in a licensed facility or approved relative home. Under the District Court order of August 17, 2004, if the relative foster family home is approved as meeting licensing standards on or after March 3, 2003, the home is determined to be approved retroactively to the date of placement with that relative, or December 23, 1997, whichever is later. (All County Letter 04-12, September 21, 2004)

181-3G ADDED 10/04
Relative placements previous to the one existing on March 3, 2003 are not eligible to receive foster care payment. However, they may be used to determine that the *Rosales* linkage requirement has been met for federal Title IV-E purposes.

Thus if a child placed with grandma on March 3, 2003 had previously been placed with aunt on June 1, 2002, the aunt is not eligible for foster care based on *Rosales*. (All County Letter 04-12, September 21, 2004; question and answer 9 in ACL 04-12 attachment)

181-3H ADDED 10/04
Question: If child is placed with a relative, other than the relative from whom removed, after petition is filed at any time during the month in which the petition is filed, e.g., petition filed March 6, 2003 and child placed March 13, 2003, is the child eligible for foster care ?

Answer: No. The child must have been residing with the relative at the time the petition was filed or within the previous six months.

Question: Is there a specific amount of time the child must have lived with the relative in the six months prior to the petition date?

Answer: No, there is not a specific amount of time; however, based on 45 CFR §233.90(c)(v)(b), an overnight stay or weekend visit with a relative does not establish that the child was "living with" the relative. There must be an indication that the relative was responsible for the day to day care of the child.

(All County Letter 04-12, September 21, 2004, questions and answers 1 and 6)

181-3I ADDED 10/04
Question: For cases in which retroactive foster care is determined under *Rosales*, must the Clothing Allowance (CA) or Specialized Care Increment (SCI) be paid retroactively?

Answer: The CA may be paid for initial placement and annually if applicable. However, the SCI may only be paid if eligibility based on the child's special care needs during the retroactive period is supported by appropriate documentation in the child's case and the services were provided.

(All County Letter 04-12, September 21, 2004, question and answer 8)

181-3J ADDED 7/06
Changes to the foster care program made by the Deficit Reduction Act of 2005 alter foster care eligibility criteria established under *Rosales* v. *Thompson.* Effective immediately, counties must cease basing new eligibility decisions for foster care upon MPP §45-202.332. Eligibility must be based on the home of the parent from whom the child was removed, as set forth in MPP §45-202.331.

Any cases previously determined eligible for foster care using §45-202.332 on or after February 8, 2006 should be evaluated for CalWORKs, KinGAP or other applicable programs. Counties must immediately track all *Rosales* cases for which foster care benefits were paid starting October 1, 2005. (All County Information Notice I-19-06, March 30, 2006)

181-3K ADDED 9/06
The Deficit Reduction Act (DRA) amends the federal Title IV-E statute to alter the foster care eligibility criteria previously established in *Rosales* v. *Thompson*. The CDSS has now received the district court's order issued on June 16, 2006, and the federal instruction letter, ACYF-CB-IM-06-2, issued on June 9, 2006, containing instructions related to the impact of the federal DRA on Rosales cases.

The federal transmittal requires that counties must cease basing new eligibility decisions for foster care upon Manual of Policies and Procedures (MPP) 45-202.332 (the *Rosales* criteria) after February 8, 2006, the date the DRA was enacted; eligibility must be based on the home of the parent from whom the child was removed, as set forth in MPP 45-202.331. Although the *Rosales* court order confirms this instruction, the court has delayed the implementation date for the new eligibility criteria to June 9, 2006, which supersedes the date stated in the federal transmittal dated February 8, 2006.

In addition, counties must now reexamine cases, if any, in which *Rosales* eligibility has already been terminated, and those in which *Rosales* eligibility was denied, on or after February 8, 2006, based on the DRA, as instructed by ACIN I-19-06. This ACIN instructed counties to "immediately 'track' all *Rosales* cases until clarification is received from the court and DHHS." Per the court order, the counties must continue to apply the *Rosales* criteria in MPP 45-202.332 to determine eligibility until June 9, 2006, and must pay any benefits due to such cases until the redetermination of eligibility as required by the federal instructions.

For cases that were determined eligible for foster care benefits using *Rosales* criteria on or prior to February 8, 2006, the federal transmittal also requires that eligibility must be redetermined based upon MPP 45-202.331 on the annual redetermination date, beginning on February 8, 2006. The federal court again confirmed this instruction to redetermine eligibility but delayed the implementation date until June 9, 2006. Specifically, the federal instructions regarding redeterminations of eligibility, as modified by the court order, states as follows:

> "For children in the Ninth Circuit who were determined eligible only because of the *Rosales* decision on or prior to [June 9, 2006], we will permit eligibility for Title IV-E foster care maintenance payments to continue through the month when the child's next annual redetermination of eligibility is due. After the month of redetermination, States will no longer be eligible to receive Title IV-E foster care maintenance payments on behalf of children determined eligible only because of the *Rosales* decision, in accordance with section 472(a) of the Act as amended… if redeterminations are not held timely (i.e. at least every 12 months) for children determined eligible pursuant to *Rosales*, the child will not be eligible for Title IV-E foster care maintenance payments from the month subsequent to the month when the last redetermination was due."

(All County Letter 06-19, June 30, 2006)

181-4
To be eligible for the federal AFDC-FC program, the child shall meet one of the following criteria for placement in FC. The child shall be removed from the home of a parent or relative as the result of a court order which specifies that responsibility for placement

and care is given to one of the designated county agencies; and if the child was placed into FC on or after October 1, 1983, reasonable efforts have been made to prevent or eliminate the need for removal of the child from his or her home and to make it possible for the child to return to his or her home. The court order shall result in the child's placement in FC with a nonrelative or with a different relative than the one from whose home the child was removed. (§§45-202.411(a) and (b))

Subsequent dismissal of jurisdictional and dispositional orders shall not result in the loss of Federal Financial Participation (FFP) provided all other general and federal AFDC-FC requirements continue to be met, and the court order was dismissed because the child turned 18 and certain other requirements are met; or the court order was dismissed because the child was relinquished or a termination of parental rights of one or both parents was granted and placement and care is with one of certain designated agencies. (§45-202.411(c), as modified effective November 26, 1997)

181-5 REVISED 5/05
In the FC program, FFP means Federal Financial Participation and is participation by the federal government in sharing the cost of AFDC-FC payments. (§45-101.1(f)(3))

181-6
Effective July 1, 1997 Federal and State AFDC-FC eligibility shall be determined using the AFDC eligibility standards which were in effect on July 16, 1996. No AFDC waivers may be applied in determining eligibility. (All-County Letter No. 98-01, January 2, 1998)

181-7 ADDED 6/04
An additional requirement for federal AFDC-FC eligibility is that the child be living in an "eligible facility". An eligible facility can include the "approved" home of a relative, former relative or nonrelative extended family member. (§45.202.51)

181-8 ADDED 7/06
County staff must verify that the court made a finding that "continuance in the home is contrary to the welfare of the minor" or a finding to that effect. Other acceptable examples include: "there is substantial danger to the welfare of the minor without removing the minor," or "the welfare of minor requires that custody be taken from parents."

For federal AFDC-FC, this court finding must be in the first court order which removes the child from his or her home (typically the detention hearing). **If this finding is not made at the first hearing which removes the child from his/her home, the child is ineligible for federal AFDC-FC funding for the duration of that stay in foster care.** Special attention should be made in cases where continuances are requested at the detention hearing. If the continuance is granted without a contrary to the welfare finding, the child will be ineligible for federal AFDC-FC for the duration of that stay in foster care. If a continuance is requested, county court staff should request that the judge make the contrary to the welfare finding prior to granting the continuance.

For State AFDC-FC, this finding must be made prior to the approval of State AFDC-FC, but need not be in the first court order removing the child from his or her home. (ACIN I-27-06, April 25, 2006)

181-8A ADDED 7/06
County staff must verify that the court made a finding that "placement and care" is vested with one of the agencies listed in MPP §45-202.6 (federal) or 45-203.5 (State), or a finding to that effect. Other acceptable examples include: "temporary placement and care is vested with the county" or "care, custody, and control is vested with the county." **This finding may be in any court order, but State and federal AFDC-FC foster care cannot be granted prior to the finding being made.**

(ACIN I-27-06, April 25, 2006)

181-8B ADDED 7/06
County staff must verify that the court made a finding that "reasonable efforts to prevent or eliminate the need for removal" have been made by the county. This finding must be made by the court no later than 60 days from the date the child is removed from the home; **if this finding is not made timely, the child is ineligible for federal AFDC-FOSTER CARE funding for the duration of that stay in foster care.** For State AFDC-FC, this finding must be made prior to the approval of State AFDC-FC, but need not be made within 60 days from the date of removal.

A finding that reasonable efforts to prevent removal and/or reunify the family is NOT required where the county obtains a finding from a judge that reasonable efforts were not necessary because:

a. the parent has subjected the child to aggravated circumstances such as abandonment, torture, chronic abuse, or sexual abuse; or

b. the parent has been convicted of murder or voluntary manslaughter of another child of the parent; or

c. the parent has been convicted of aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or voluntary manslaughter; or

d. the parent has been convicted of a felony assault that results in serious bodily injury to the child or another child of the parent; or

e. the parental rights of the parent have been terminated to a sibling of the child in foster care.

(ACIN I-27-06, April 25, 2006))

182-1
For eligibility under the State AFDC-FC Program, the child shall be placed with a nonrelative or be living with a nonrelated legal guardian. (§45-203.2) The court decision in *Timmons* v. *McMahon* held that the SDSS had unlawfully denied AFDC-FC payments to children living with temporary legal guardians. Children otherwise eligible for State AFDC-FC may receive funding under this program when living with a temporary or permanent nonrelated legal guardian. (All-County Letter (ACL) No. 92-08, January 14, 1992)

182-1A REVISED 5/05
In the State AFDC-FC program, no aid shall be paid on behalf of a child who is living in the same home as his/her birth or adoptive parents, as specified in §45-302.2. (§45-203.211, Handbook)

182-2
The Court of Appeal, First Appellate District, Division Three, held §45-101(ee) was invalid to the extent that it treated former stepparents as "relatives" in the State FC Program. (*Norman* v. *McMahon* (1990) 225 Cal. App. 3d 1450, 275 Cal. Rptr. 698) The definition of a "relative" was renumbered, and the *Norman* case was implemented in state regulations by making a revision to the renumbered regulation. (Handbook §45-101(r)(1)(A)3.(a), revised effective August 1, 1998)

Based on a revision to W&IC §11400(m), which had formerly cross-referenced a federal statute, and which now lists those persons who are "relatives" for AFDC-FC purposes, the CDSS has determined that the *Norman* case no longer applies, nor does Handbook §45-101(r)(1)(A)3.(a). All persons, including former stepparents, listed in §45-101(r)(1) are now considered relatives for both state and federal FC purposes. However, children who were living with former stepparents and who were receiving state AFDC-FC as of September 1, 1999 will continue to be eligible for state FC.

(All-County Letter No. 99-58, September 1, 1999; W&IC §11400(m), revising Handbook §45-101(r)(1)(A)3.(a), effective September 1, 1999)

182-3
Effective July 1, 1997 Federal and State AFDC-FC eligibility shall be determined using the AFDC eligibility standards which were in effect on July 16, 1996. No AFDC waivers may be applied in determining eligibility. (All-County Letter No. 98-01, January 2, 1998)

182-4 ADDED 7/06
County staff must verify that the court made a finding that “continuance in the home is contrary to the welfare of the minor” or a finding to that effect. Other acceptable examples include: “there is substantial danger to the welfare of the minor without removing the minor,” or “the welfare of minor requires that custody be taken from parents.”

For State AFDC-FC, this finding must be made prior to the approval of State AFDC-FC, but need not be in the first court order removing the child from his or her home.
(ACIN I-27-06, April 25, 2006)

182-4A ADDED 7/06
County staff must verify that the court made a finding that “placement and care” is vested with one of the agencies listed in MPP §45-202.6 (federal) or 45-203.5 (State), or a finding to that effect. Other acceptable examples include: “temporary placement and care is vested with the county” or “care, custody, and control is vested with the county.” **This finding may be in any court order, but State and federal AFDC-FC foster care cannot be granted prior to the finding being made.**

(ACIN I-27-06, April 25, 2006)

182-4B ADDED 7/06
County staff must verify that the court made a finding that "reasonable efforts to prevent or eliminate the need for removal" have been made by the county. This finding must be made by the court no later than 60 days from the date the child is removed from the home; **if this finding is not made timely, the child is ineligible for federal AFDC-FOSTER CARE funding for the duration of that stay in foster care.** For State AFDC-FC, this finding must be made prior to the approval of State AFDC-FC, but need not be made within 60 days from the date of removal.

A finding that reasonable efforts to prevent removal and/or reunify the family is NOT required where the county obtains a finding from a judge that reasonable efforts were not necessary because:

a. the parent has subjected the child to aggravated circumstances such as abandonment, torture, chronic abuse, or sexual abuse; or

b. the parent has been convicted of murder or voluntary manslaughter of another child of the parent; or

c. the parent has been convicted of aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or voluntary manslaughter; or

d. the parent has been convicted of a felony assault that results in serious bodily injury to the child or another child of the parent; or

e. the parental rights of the parent have been terminated to a sibling of the child in foster care.

(ACIN I-27-06, April 25, 2006))

183-1 REVISED 6/04
When a child in an AU is moved to FC, the effective date of AFDC-FC assistance is the date he/she is placed in an AFDC-FC eligible facility and is otherwise AFDC-FC eligible. (§44-317.622)

When a child is transferring from AFDC-FC to AFDC-FG/U, or vice versa, but remains in the home of the same related caretaker, the effective date of program transfer is the first of the month following the request for change of program. (§44-317.623)

183-2
In the AFDC-FC program the beginning date of aid is the date of application if the child meets all eligibility conditions on that date, or the date on which the child meets all eligibility conditions, whichever is later. (§45-302.31)

183-4
Under the AFDC-FC Program, current rather than retrospective budgeting is used for grant computation purposes. (§45-302.4)

183-4A ADDED 8/05
Pursuant to MPP §45-302.41 the budget period for computation of the foster care payment is the current month. The payment is to be computed on the basis of known or estimated income in the current calendar month. Additionally, MPP §45-303.1 indicates that foster care payments are to be delivered in one amount no later than the fifteenth of the month after the furnishing of care.

All County Information Notice I-32-05, July 13, 2005)

183-5
Supplementation of SSI/SSP with State AFDC- FC is allowed when the child meets all general and State AFDC-FC eligibility requirements, and the cost of foster care placement exceeds the amount of the SSI/SSP benefit level. (§45-302.11) The SSI/SSP payments are income. (All-County Letter No. 94-82, September 30, 1994.)

183-6A
Effective February 4, 1994, federal AFDC-FC payments may be made to otherwise eligible children receiving SSI/SSP, and SSI/SSP payments are not to be counted as income. (All-County Letter No. 94-82, September 30, 1994)

183-7
"Excess payments" made to a "family" from child/spousal support collected in any month are considered available income for CalWORKs purposes in the month received. "Pass-on payments" made on behalf of a foster care case shall be considered income in the month received. (§82-520.5, revised effective October 1, 1998 and repealed effective April 1, 2000) These regulations were revised to provide that all excess and pass-on payments made to a family from child/spousal support are considered available income to the family or foster care child. (§82-518.14, effective April 1, 2000)

184-1
To be eligible for "specialized care", a child must be in receipt of AFDC-FC benefits and be placed in an approved family home or a certified home of a nontreatment foster family agency.

Specialized care allows a county to supplement the family home basic rate for children who require additional care and supervision because of a health and/or behavior problem. The specialized care "increment" supplements the basic rate, and the increment and the basic rate equal the "specialized care rate".

(All-County Information Notice (ACIN) No. I-113-00, November 30, 2000)

184-2
The Specialized Care Rates Program is administered at the local level. It is subject to review by the CDSS. Counties which want to adopt or modify such a program are required to submit a proposal to CDSS, which proposal must include the following.

> The current and proposed population to be served including the types of behavior and/or health problems.

> The current and proposed types of facilities utilized.

> Demonstration of cost neutrality to the State General Fund.

> The county's payment approval process.

A detailed description of the required data elements for county proposals is found in §11-401.323.

Following a county's submittal to modify or adopt its specialized care system/plan, CDSS will review the proposed plan and will notify the county in writing whether it was rejected or granted conditional approval. Within one year of the implementation date of the proposal, the county will be required to submit specific documentation as stated in §11-401.34, to demonstrate that the proposed AFDC-FC payments have not increased costs to the State General Fund. The Department will grant final approval of the county's plan contingent upon the county's demonstration of this cost neutrality.

(All-County Information Notice No. I-113-00, November 30, 2000)

185-1
It was the CDSS position that under Welfare and Institutions Code (W&IC) §11004, all public social services program overpayments must be collected. Therefore, AFDC-FC overpayments are subject to collection when appropriate. The method for collection is to send adequate notice, requesting voluntary repayment, or by pursuing civil remedies. (All-County Information Notice (ACIN) No. I-20-90, March 15, 1990)

185-1A
The Alameda County Superior Court issued a peremptory writ of mandate in which the court found no state authority (under W&IC §11004) nor federal authority for recouping Foster Care (FC) overpayments.

The court specifically stated:

> "IT IS HEREBY ORDERED THAT the petition for peremptory writ of mandate is granted. Under California law, the State cannot seek reimbursement of public assistance funds paid absent specific statutory authority to recoup such funds. *Ogdon* v. *Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 192. The Court finds no state authority exists for recouping foster care overpayments. In particular, Welfare and Institutions Code section 11004 does not provide statutory authority to recoup such funds. Furthermore, the Court finds no federal authority exists for recouping foster care overpayments."

The court then ordered the CDSS to "...discontinue their policy and practice of attempting recoupment from petitioners of funds the state erroneously paid to foster children in their charge, to rescind all actions to collect such overpayments, and to notify petitioners of their rescission of actions to collect such overpayments." (*Bass* v. *Anderson*, Alameda County Superior Court, No. 749590-8, June 6, 1997)

185-1B
Between June 6, 1997 and January 1, 1999, the CDSS took the following position in regard to Foster Care (FC) overpayments:

> Based on the Superior Court order, in *Bass* v. *Anderson*, the CDSS rescinded All-County Information Notice (ACIN) No. I-20-90 effective June 6, 1997, and directed the counties to discontinue the practice of pursuing recovery of nonfraudulent FC overpayments from relative and licensed foster family homes; to identify and rescind all current actions to recover such overpayments from those relatives or homes; and to notify all those relative and licensed providers currently subject to overpayment recovery action of the rescission of overpayment collection action. It is the CDSS position that the Bass order does not affect Foster Family Agency, Adoption Assistance or group home overpayment collection policies, or recovery of overpayments resulting from "fraud".

The CDSS has defined fraud "... as the intentional failure to notify a county of any changes affecting eligibility as required, including but not limited to the failure to actually provide foster care services for the period in question without informing the county."

(All-County Letter No. 97-55, quote on p. 2, September 17, 1997, rescinded with the enactment of W&IC §11466.24, effective January 1, 1999)

185-2
State law deals with overpayments and underpayments in the AFDC Program. (W&IC §11004) Current and future grants payable to an AU may be reduced because of prior overpayments to an extent consistent with federal law. (Subsection (c))

If the Department determines after a hearing that an overpayment occurred, the county providing the public social services shall seek to recover in accordance with Subdivision (c) the full amount of the overpayment to the AU including any amount paid while the hearing process was pending, if required in order to conform to federal law or regulation. (Subsection (f))

If the individual is no longer receiving aid under Chapter 2 (commencing with §11200) recovery of overpayments received under that Chapter shall not be attempted where the outstanding overpayments are less than $35. Where the overpayment amounts owed are $35 or more, reasonable cost effective efforts at collection shall be implemented. Reasonable efforts shall include notification of the amount of the overpayment and that repayment is required. The Department shall define reasonable cost effective collection methods. In cases involving fraud, every effort shall be made to collect the overpayment regardless of the amount. (Subsection (g))

This subdivision shall be applicable only to applicants, recipients, and payees under Chapter 2 commencing with §11200 of Part 3 of Division 9. W&IC §11400, et seq., deals with AFDC-FC. That article is contained within Chapter 2, Part 3 of Division 9 of the W&IC. (Subsection (l))

185-3
State law was amended effective January 1, 1999, to allow collection of certain Foster Care (FC) overpayments. The new law provided, in pertinent part, that:

"(a) In accordance with this section, a county shall collect an overpayment, discovered on or after January 1, 1999, made to a foster family home, an approved home of a relative, or an approved home of a nonrelative legal guardian, for any period of time in which the foster child was not cared for in that home, unless any of the following conditions exist, in which case a county shall not collect the overpayment:

"(1) The cost of the collection exceeds that amount of the overpayment that is likely to be recovered by the county. The cost of collecting the overpayment and the likelihood of collection shall be documented by the county.

"(2) The child was temporarily removed from the home and payment was owed to the provider to maintain the child's placement.

"(3) The overpayment was exclusively the result of a county administrative error or both the county welfare department and the provider were unaware of the information that would establish that the foster child was not eligible for foster care benefits.

"(4) The provider did not have knowledge of, and did not contribute to, the cause of the overpayment."

(W&IC §11466.24, effective January 1, 1999)

185-3A
Despite the limitations placed on the collection of overpayments set forth in W&IC §11466.24(a), it is the position of the CDSS, as reflected in its regulations, that: "Nothing in §45-304.121 prevents counties from collecting an overpayment which results from the payment of aid paid pending." (§45-304.122)

185-3B
Under California law, the State cannot seek reimbursement of public assistance funds absent specific statutory authority to recoup such funds. (*Ogdon* v. *Workmen's Comp. Appeals Bd.* (1974) 11 Cal. 3d 192) This principle has been used to invalidate regulations of the Department of Benefit Payments (the predecessor of the CDSS) which permitted the counties to recover aid paid pending when the administrative appeal was unsuccessful. (*Webb* v. *Swoap* (1974) 40 Cal. App. 3d 191, 114 Cal. Rptr. 897)

185-3C
State regulations provide that the county "shall not demand collection of [FC] overpayments where any of the following conditions exist:". (§45-304.121, effective July 6, 2000)

These conditions, set forth in §§45-304.212(a) through (e), are the same as those set forth in state law. Under state law, the county "shall not collect the overpayment" if any of those conditions exist. (W&IC §11466.24(a))

185-3D
State regulations provide that the county shall not "demand collection" of the FC overpayment when the cost of the collection "exceeds the amount of the overpayment." (§45-304.121(e)) Costs which the county shall consider when determining the cost effectiveness of collection are the total administrative and personnel costs, legal filing fees, investigative costs, and any other costs which are applicable. (§45-304.121(e)(1))

State law provides that the county shall not "collect the overpayment" when the cost of the collection "exceeds that amount of the overpayment that is likely to be recovered" by the county. That same law requires the county to document both the cost of collecting the overpayment and the likelihood of collection. (W&IC §11466.24(a)(1))

185-4
FC overpayments are to be investigated when information indicates that such overpayments may have occurred.

Under state regulations, the following process is followed:

.211 Review eligibility factors to determine the correct grant.

.212 If an overpayment has occurred, determine whether any factors in §45-304.121 preclude overpayment recovery.

.213 If none of those factors preclude recovery, calculate the overpayment.

.214 Determine from whom the overpayment may be recovered by referring to §45-304.3.

.215 Determine the appropriate recovery method, referring to §45-305, and the amount to be recovered.

(§45-304.2)

185-4A
Under state regulations in §45-304.2, an overpayment can be recovered from an FC provider when such provider cared for a child in that provider's home, and none of the provisions in §45-304.21 apply. Under state law, an overpayment can only be established against "a foster family home, an approved home of a relative, or an approved home of a nonrelated legal guardian, for any period of time in which the foster child was not cared for in that home." [emphasis added] (W&IC §11466.24(a))

185-5
FC overpayments shall only be collected from the provider who actually received the overpayment from the county. (§45-304.31) If the child for whom the overpayment was assessed is no longer residing in the home of the provider, grant adjustment and grant offset shall not be used to recover the overpayment. (§45-304.32)

185-6
Under state law:

"There shall be a one-year statute of limitations from the date upon which the county determined that there was an overpayment."

(W&IC §11466.24(f))

185-6A
Notwithstanding state law, as set forth in W&IC §11466.24(f), it is the position of the CDSS that: "The initial determination of the [Foster Care] overpayment may occur more than a year after the actual overpayment occurred and recovery shall be sought." (Handbook §45-304.421)

185-7 REVISED 5/05
The county may recover FC overpayments through voluntary repayment agreements, voluntary grant offsets, grant adjustments, demand for repayment, or civil judgment. (W&IC §11466.24(e); §45-305.1, .2)

185-8
If an FC provider is successful in the appeal of a collected overpayment, the incorrectly collected funds shall be repaid, plus simple interest, based on the Surplus Money Investment Fund. (§11466.24(d))

186-1
Rates for AFDC-FC children placed in a licensed or approved family home with a capacity of six or less, or in an approved home of a relative or nonrelated legal guardian, are based on statutory monthly rates established in July 1989 and adjusted based on statutory formulae. (W&IC §11461)

186-2
When an AFDC-FC child is placed in a different county than the county with payment responsibility, the responsible county shall pay the host county's rate.

This rule shall also apply in counties with specialized care rates, except if the host county has no specialized care rate and the responsible county does have such a rate, the county responsible for payment shall pay its own rate. (§11-401.4)

186-3
An FC child residing in a family or group home as a result of placement by a public agency, or by a private agency which has legal custody due to relinquishment or court order, is considered to make his/her home in the county in which the agency is located.

The agency has placed the child if it actively participated in making the decision as to whether or not the child was to be placed, and if it initiated the placement through direct negotiations or requested help in making the placement. (§40-125.81)

186-4
When an agency has placed a child in FC, and at that time or thereafter a court of competent jurisdiction in another county accepts responsibility for the child, the first county shall initiate an intercounty transfer of the child's FC case to the county where the court is located. (§40-125.84)

186-5
When a first county places a child in a foster home in a second county, the first county retains responsibility for payment of aid. (§40-190.32, formerly §40-187.221)

186-6
The "basic rate" is defined as the rate paid on behalf of an AFDC child placed in a family home exclusive of any specialized care increment. (§11-400b.(3))

A "specialized care increment" is defined as an amount paid to a family home in addition to the family home basic rate on behalf of an AFDC-FC child requiring specialized care because of health and/or behavior problems. (§11-400s.(6))

The "specialized care rate" is defined as the total rate (family home basic rate plus the specialized care increment) paid on behalf of an AFDC-FC child requiring specialized care. (§11-400s.(7))

Counties shall separately identify their family home basic rate and specialized care increment. (§11-401.211)

186-7 ADDED 6/04
Notwithstanding any other provision of law, the State Department of Social Services shall use the residential facility rates established by the State Department of Developmental Services to determine rates to be paid for 24-hour out-of-home nonmedical care and supervision of children who are both regional center clients pursuant to Section 4684 and AFDC-FC recipients under the provisions of this chapter and placed in licensed community care facilities. Any services authorized by a regional center for AFDC-Foster Care recipients that are not allowable under state or federal AFDC-Foster Care program requirements shall be paid pursuant to Section 4684. (W&IC §11464)

186-7A ADDED 10/04
Notwithstanding any other provision of law, the cost of providing 24-hour out-of-home nonmedical care and supervision in licensed community care facilities shall be funded by the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program pursuant to Section 11464, for children who are both AFDC-Foster Care recipients and regional center clients.

(Welfare and Institutions Code (W&IC) §4684)

186-8 ADDED 10/04
The funding responsibilities of the CDSS with respect to foster children who are regional center clients (dual agency children) are defined in Welfare and Institutions Code (W&IC) sections 4684 and 11464.

Regional centers are responsible for setting rates for facilities serving regional center clients in accordance with statute. The regional centers are also responsible for setting the level of care needed by dual agency children and notifying the county of the approved service level for the child and the corresponding established Alternative Residential Model (ARM) rate for the placement facility. The county and regional center

share responsibility for ensuring an appropriate level of placement for dual agency children. The county is responsible for assuring the claim submitted for payment of AFDC-foster care funds is for allowable costs and in the correct amount, based upon the level assigned to the placement facility. The counties and regional centers are responsible for maintaining an open line of communication and participation regarding the services assessed and provided to dual agency children. (All County Letter 98-28, May, 4 1998)

186-8A ADDED 6/04
If a dual agency foster child receives an SSI/SSP payment and resides in a licensed foster home or residential care facility, he or she may receive the P&I Allowance. Likewise, an adopted child who is also a regional center consumer and receives an SSI/SSP payment and AAP benefits concurrently while living with his or her adoptive parents, may receive the value of a P&I Allowance because the AAP benefits are based on the amount that would have been paid had the child remained in foster care. But the P&I Allowance is not included in a residential care facility's basic rate.

For SSI/SSP recipients, the basic rate means the established nonmedical out-of-home care rate which includes any exempt income allowance but does not include that amount allocated for the recipient's personal and incidental needs. (DSS All County Letter 03-60, November 13, 2003.)

186-8B ADDED 2/05
Regional center placements may also be made into small family homes, licensed foster family homes, group homes and certified homes of a Foster Family Agency. The provisions of WIC Section 11464 apply to AFDC-Foster Care children placed in any of these licensed facilities having a "vendorized" or contractual relationship with the regional centers.

Relative caregivers are exempt from licensure as a CCF. Therefore, the funding for the placements of dual agency children with unlicensed relatives is not governed by WIC Section 4684 or 11464 which only apply to licensed CCFs.

(All County Letter 98-28, May 4, 1998)

186-9 ADDED 10/04
The appropriate rate to pay for a child placed with a relative/non-relative extended family member (NREFM) who is also a certified home of a foster family agency (FFA) depends on the type of placement the child needs and whether the child is federally or state eligible for foster care.

If the child needs an FFA placement and the county places the child with an FFA who then places the child in a certified home of a person who happens to be a relative/NREFM of the child, then the county may pay the FFA rate for the placement.

If the county places the child in an approved home of the relative/NREFM who is also an FFA certified home (or later becomes one), and the child's needs can be met by a relative/NREFM placement, then the county may only pay the basic rate (plus specialized care if appropriate) regardless of the relative/NREFM's status as an FFA certified home. (All County Letter 04-28, July 16, 2004)